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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,735	12/27/2000	Bernd Dorken	028622/0102	3749
22428	7590	11/21/2005	EXAMINER	
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			TUNGATURTHI, PARITHOSH K	
			ART UNIT	PAPER NUMBER
			1643	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No. 09/673,735	Applicant(s) DORKEN ET AL.	
Examiner Parithosh K. Tungaturthi	Art Unit 1643	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11.08.2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 ~~06~~ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 103(a) ~~107~~.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1-5, 11-23, 30, 33, 37, 40, 41 and 710.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 11, 44 and 45.  
Claim(s) withdrawn from consideration: NONE.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**LARRY R. HELMS, PH.D.  
SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: The arguments presented by the applicant in regard to the 112 first rejection for claims 11, and 44-45 are not found persuasive. As stated in the previous office actions, the specification is enabled for a single-chain functional polypeptide comprising a first Ig chain thereof specifically recognizing CD19 and a second Ig chain thereof recognizing the human CD3 antigen wherein the first and second Ig chains consist of 3 CDRs for both Vh and VI regions, but not for any binding domain comprising one or two CDRs of the Vh and/or VI region (as claimed in claims 11 and 44). The applicant refers to the previously cited art (Olsen et al and Rudikoff et al) in response to the 112 first rejection for claims 11 and 44-45. The argument is not persuasive because claim 11 recites "atleast one CDR" and claims 44 and 45 recite "atleast two CDRs of the Vh and VI region", and Olsen et al teach that only Vh CDR 2 is dispensable. Further, the claims as written read upon an antibody consisting of "atleast one CDR" or "atleast two CDRs" which are not commensurate within the scope of the disclosure and further are not commensurate within the teachings of Olsen et al. Olsen et al teach that for the inhibitory effect of the anti-ATF1/CREB scFv does not necessarily require Vh CDR2, however, only in the context of other CDRs present within the scFV. Furthermore, the specification does not disclose a functional antibody comprising "one CDR" or "two CDRs". In response to the arguments presented by the applicant in regard to the previously cited reference, Rudikoff et al, it is not clear as to what the applicant is referring to as a statement of proof towards the arguments presented. Rudikoff et al does not, any where in the document, teach a functional antibody with only one or two CDRs. The applicant is requested to point out the specific statement that the argument on page 14 (under claim rejection - 112 first paragraph) is based on.

  
**LARRY R. HELMS, PH.D.**  
**SUPERVISORY PATENT EXAMINER**